



06-CV-01301-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WASHINGTON
AT SEATTLE

GLEN SCOTT MILNER

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE NAVY.

Defendant.

NO CV 6 1301 PD

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT

1. INTRODUCTION

1. This action arises out of violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, et seq. (2006). Plaintiff Glen Milner challenges the failure of defendant U.S. Department of the Navy to respond adequately to his FOIA requests and appeals in the manner and within the time limits mandated by FOIA. The requested documents relate to the Explosive Safety Quantity Distance ("ESQD") arcs or explosives

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR VIOLATION OF
THE FREEDOM OF INFORMATION ACT - 1

SEA 3835
8/1/05

1 handling zones at the ammunition depot at Naval Magazine Indian Island ("Indian Island"),
2 Port Hadlock, Washington. Indian Island is within close proximity of Port Townsend,
3 Washington. The risk of an explosion of ammunition at Indian Island poses a potential
4 threat to all residents in the area. Defendant has refused to provide Milner with documents
5 showing the impacts or potential impacts of activities in the explosives handling zone and
6 the surrounding areas, as well as maps and diagrams of the ESQD arcs for the ammunition
7 depot at Indian Island. Defendant also denied Milner's request for documents regarding
8 safety instructions or operating procedures for Navy or civilian maritime traffic within or
9 near the explosives handling zone or ESQD arcs at the ammunition depot at Indian Island.
10 As of the date of this action, defendant has refused to release the requested information.
11 Defendant's refusal is without grounds under FOIA. Milner seeks injunctive relief
12 directing defendant to provide all requested materials promptly. Milner seeks further
13 declaratory relief that defendant's actions violated FOIA. Milner seeks also his costs and
14 fees in bringing this action as provided by FOIA, 5 U.S.C. § 552(a)(4)(E).
15

16 II. JURISDICTION, VENUE, AND A BASIS FOR RELIEF

17 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. §
18 552(a)(4)(B).
19

20 3. Venue rests properly in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).
21

22 4. Declaratory relief is appropriate under 28 U.S.C § 2201.
23

24 5. Injunctive relief is appropriate under 28 U.S.C. § 2202.
25

26 6. Fees and costs are appropriate pursuant to 5 U.S.C. § 552(a)(4)(E).
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28 COMPLAINT FOR DECLARATORY AND
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THE FREEDOM OF INFORMATION ACT - 2

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III. PARTIES

7. Plaintiff Glen Scott Milner is a resident of Lake Forest Park, King County, Washington and is a frequent contributor to newspapers, newsletters, radio, and television regarding safety issues concerning the U.S. Navy's growing presence in the Puget Sound region. Glen Milner has publicly disclosed issues involving the U.S. Navy's firing depleted uranium or radioactive munitions in prime fishing areas off of the Washington Coast, risks to the public involving missile handling operations at the submarine base at Bangor, and other issues involving U.S. military operations having an impact on the safety and well being of citizen populations and the environment in the Puget Sound region. Milner is a life-long resident of the Puget Sound region and lives with his wife and daughter within 40 miles of Indian Island.

8. Defendant U.S. Department of the Navy is a division of the U.S. Department of Defense and is an agency of the United States Government, and is thereby subject to FOIA pursuant to 5 U.S.C § 552(f).

IV. STATEMENT OF FACTS

A. December 7, 2003 First FOIA Request

9. On December 7, 2003, plaintiff Glen Scott Milner filed a FOIA request with the Commanding Officer of the Naval Magazine Indian Island, Port Hadlock, Washington. The December 7, 2003 FOIA request sought information regarding ESQD arcs or an explosives handling zone at the ammunition depot at Indian Island. Milner requested three types of documents: 1) all documents showing impacts or potential impacts of activities in

1 the explosives handling zone to the ammunition depot and surrounding areas; 2) all maps
2 and diagrams of the ammunition depot at Indian Island which show ESQD arcs or an
3 explosives handling zone; and 3) all documents regarding any safety instructions or
4 operating procedures for Navy or civilian maritime traffic within or near the explosives
5 handling zone or ESQD arcs at the ammunition depot at Indian Island. Milner's letter
6 asked that if the records were to be denied, that defendant redact the sensitive or exempt
7 portion and provide Milner with an explanation of why such material was expurgated.
8 Plaintiff's letter also requested that defendant list the classification rating for all material
9 denied, the identity of the classifier, the date or event for automatic declassification, and
10 the classification review or downgrading. Plaintiff's letter also asked defendant to list,
11 if applicable, the identity of the official authorizing extension of automatic declassification
12 or review; and, if applicable, the reason for extended classification. Milner asked that
13 materials be segregated where possible. Milner's letter further requested that all fees be
14 waived as disclosure is in the public interest and Milner intends no financial gain. 5 U.S.C.
15 § 522(a)(4)(A).

16
17 10. The statutory deadline to issue a final determination regarding Milner's
18 FOIA request elapsed twenty days from defendant's receipt of the FOIA request. 5
19 U.S.C. § 552(a)(6)(A)(I).

20
21 11. Milner did not receive a timely determination of his FOIA request within
22 twenty days from defendant's receipt of the December 7, 2003 FOIA request.

23
24 12. As the following paragraphs 13-36 describe in more detail, despite an
25

1 extensive "runaround" including having his original request parsed out to numerous offices
2 requiring numerous appeals to different locations, Milner never received the documents
3 requested.
4

5 13. On January 24, 2004, Milner submitted an appeal to the General Counsel of
6 the Navy in light of the defendant's failure to respond to Milner's December 7, 2003
7 FOIA request.
8

9 14. On January 26, 2004, Theodore F. Fredman, Assistant to the General
10 Counsel of the Navy, wrote to Milner to acknowledge his appeal and to assign it docket
11 number OGC-28/04.
12

13 15. On January 26, 2004, D. L. Richman, Assistant Staff Judge Advocate for
14 the Navy Region Northwest, responded to Milner's December 7, 2003 FOIA request. Mr.
15 Richman wrote that all documents which referred to Naval Magazine Indian Island were
16 determined exempt from disclosure under FOIA Exemptions 1, 2, and 3; 5 U.S.C. §
17 552(b)(1)-(3). Mr. Richman wrote further that the documents were also not segregable
18 within the meaning of SECNAVINST 5720.42F(2)(b). The letter also stated that the fees
19 had been waived in processing Milner's request.
20

21 16. Documents requested and withheld do not fall within FOIA's Exemptions
22 1, 2 or 3.
23

24 17. On January 29, Milner appealed the January 26, 2004 denial of his FOIA
25 request by Mr. Richman. Milner's appeal described that Mr. Richman had stated in a
26 telephone conversation on January 29, 2004 that 17 documents had been found responsive
27

1 to the December 7, 2003 FOIA request. One document had 5 sub-parts. Mr. Richman
2 estimated that there may be 1,000 pages of responsive material. Milner appealed pursuant
3 to 5 U.S.C. § 552(a)(6).
4

5 18. On July 20, 2004, Mr. Fredman informed Milner by letter that there were
6 17 documents found responsive, but that only 2 were within the cognizance of the Navy
7 Region Northwest. As a result, the other 15 documents were sent to the departments of the
8 Navy from which they originated.
9

10 19. On August 3, 2004, William R. Molzahn, Deputy General Counsel of the
11 Office of the General Counsel for the Navy, issued the Navy's final administrative
12 adjudication regarding Milner's appeal dated January 29, 2004 of Mr. Richman's denial
13 of Milner's FOIA request of December 7, 2003, docket number OGC-70/04. Mr.
14 Molzahn stated the grounds for denying Milner's appeal were based on Exemptions 2 and
15 7(F) of the Freedom of Information Act; 5 U.S.C. § 552(b)(2), (b)(7)(F).
16

17 20. Documents requested and withheld are not protected by Exemptions 2 or
18 7(F).
19

20 21. On August 16, 2004, R. F. Parker, Captain in the Civil Engineer Corps at
21 the Northwest Naval Facilities Engineering Command, responded to Milner's forwarded
22 FOIA request of December 7, 2003, issuing a partial withholding of documents pursuant
23 to FOIA Exemptions 2, 6, and 7(F); 5 U.S.C. § 552(b)(2), (6), (7)(F).
24

25 22. Documents requested and withheld are not protected by Exemptions 2, 6 or
26 7(F).
27

1 23. On August 26, 2004, A. S. Thompson, Rear Admiral and Director of the
2 Ordnance and Logistics Operations Division, responded to Milner's forwarded FOIA
3 request of December 7, 2003, issuing a partial denial of releasing documents. Mr.
4 Thompson stated that many documents and portions of documents were subject to FOIA
5 Exemptions 2, 5, and 7, 5 U.S.C. § 552(b)(2), (5), (7).

6
7 24. Documents requested and withheld are not protected by Exemptions 2, 5 or
8 7(F).

9
10 25. On September 4, 2004, Milner filed an appeal of Mr. Thompson's partial
11 denial of document release to the General Counsel of the Navy. The appeal challenged the
12 Mr. Thompson's invocation of FOIA exemptions and his vague responses to Milner's
13 FOIA request.

14
15 26. On September 22, 2004, Mr. Parker, of Engineering Field Activity
16 Northwest, responded to Milner's forwarded FOIA request of December 7, 2003, partially
17 withholding documents and portions of documents pursuant to FOIA Exemptions 2 and 7,
18 5 U.S.C. § 552(b)(2), (7).

19 27. Documents requested and withheld are not protected by Exemptions 2 or 7.

20
21 28. On October 19, 2004, Mr. Molzahn issued a final administrative adjudication
22 of Milner's FOIA appeal dated September 4, 2004, docketed as OGC-81/04. The final
23 adjudication upheld the initial denial, stating that FOIA Exemptions 2, 6, and 7(F), 5
24 U.S.C. § 552(b)(2), (6), (7)(F) apply to the documents Milner requested.

25
26 29. On October 22, 2004, W.F. Wright, Captain in the Office of the Chief of

1 Naval Operations, responded to Milner's forwarded FOIA request of December 7, 2003,
2 withholding portions of the documents requested by invoking FOIA Exemptions 2 and 7(F),
3 5 U.S.C. § 552(b)(2), (7)(F).
4

5 30. Documents requested and withheld are not protected by Exemptions 2 or
6 7(F).

7 31. On November 1, 2004, Milner appealed Mr. Wright's partial denial the
8 December 7, 2003 FOIA request to the Judge Advocate General of the Navy. Pursuant
9 to 5 U.S.C. § 552(a)(6), the appeal challenged the asserted FOIA Exemptions.
10

11 32. On November 1, 2004, Milner filed an appeal with the Judge Advocate
12 General of the Navy, challenging Mr. Wright's partial denial of Milner's December 7,
13 2003 FOIA request. Pursuant to 5 U.S.C. § 552(a)(6), Milner challenged the asserted
14 FOIA Exemptions. Milner explained that materials requested neither create a risk to the
15 Navy's security procedures at Indian Island, nor endanger the life or physical safety of
16 individuals. Milner again requested the same materials originally sought, stating further
17 that the information is very important to the public.
18

19 33. On November 2, 2004, Milner filed an appeal with the Judge Advocate
20 General of the Navy, challenging Mr. Wright's partial denial of Milner's December 7,
21 2003 FOIA request. Pursuant to 5 U.S.C. § 552(a)(6), Milner challenged the asserted
22 FOIA Exemptions. Specifically, Milner appealed Mr. Wright's failure to identify the
23 exemptions applied for each withheld portion of the responsive documents. Milner also
24 challenged whether FOIA Exemptions 2 and 7 are applicable.
25
26

1 34. On November 24, 2004, Mr. Molzahn issued a final administrative
2 adjudication on Milner's appeal filed September 22, 2004 of the Engineering Field
3 Activity, Northwest's partial denial of the December 7, 2003 FOIA request. Mr. Molzahn
4 affirmed the denial of disclosure of two of three documents requested pursuant to
5 Exemptions 2 and 7(F). However, Mr. Molzahn held that "the transmittal sheet dated 25
6 June 1986 is not subject to withholding and is [subsequently] disclosed."

8 35. Mr. Molzahn affirmed the denial of portions of the documents under
9 Exemptions 2 and 7(F), 5 U.S.C. § 552(b)(2), (7)(F).

11 36. Milner has never been provided documents responsive to his December 7,
12 2003 FOIA request.

13 B. February 3, 2004, Second FOIA Request

14 37. While the above seemingly endless process continued concerning his original
15 December 7, 2003, FOIA request, on February 3, 2004, Milner submitted a FOIA request
16 directly to the Commanding Officer at the Naval Ordnance Safety and Security Activity.
17 This second request sought simply all information regarding the Explosive Safety Quantity
18 Distance (ESQD) arcs or explosives handling zone at the ammunition depot at Indian Island.
19

20 38. Milner did not receive a timely determination of his FOIA request within
21 twenty days from defendant's receipt of the February 3, 2004, FOIA request.

22 39. On March 7, 2004, Milner appealed the lack of response with the Judge
23 Advocate General's office.

24 40. On June 30, 2004, Milner was contacted by Theodore F. Fredman,

1 Assistant to the General Counsel of the Navy, and informed that his February 3, 2004
2 request was essentially consolidated with his earlier request and that his appeal was
3 "moot."
4

5 41. Milner has never been provided documents responsive to his February 3,
6 2004 request.

7 42. Milner seeks and requires urgently the materials requested in order to
8 prepare investigative news articles and timely inform the public about the potential dangers
9 posed to residents in and around Port Townsend, Washington, due to the ammunition
10 depots at Indian Island.
11

12 43. Milner is directly and adversely affected by defendant's refusal to provide
13 records in a timely manner in response to his FOIA request.
14

15 44. Milner has fully exhausted all administrative remedies required by FOIA in
16 5 U.S.C. § 552(a)(6)(A) and 552(a)(6)(C).

17 45. Milner has been required to expend costs to obtain the services of a law firm,
18 consisting of attorneys, law clerks, and legal assistants to prosecute this action.
19

20 V. CAUSE OF ACTION

21 46. The allegations made in Paragraphs 1-45 are realleged and incorporated
22 herein by reference.

23 47. Milner's requests for information will contribute substantially and
24 meaningfully to the public's understanding of defendant's activities and operations at
25 Indian Island. Specifically, the information sought by Milner will allow the public to
26

1 become fully informed as to the safety of the ammunition depot at Indian Island as it relates
2 to the neighboring communities adjacent to Indian Island. It is quite likely that the public
3 has access to and conducts activity in areas included in the ESQD arcs and explosives
4 handling zone without being informed by the defendant. The safety and security of the
5 public depends on the disclosure of this information. It is inconsistent of defendant to deny
6 Milner the materials requested, which do not involve nuclear materials, when it has
7 released ESQD arcs for Trident submarine bases at Kings Bay, Georgia, and Bangor,
8 Washington. This inconsistency elicits suspicion that members of the public live and
9 conduct affairs in the ESQD arcs and explosives handling zone.

12 48. By failing to make a final determination of the merits of Milner's FOIA
13 request of December 7, 2003, within twenty days of its receipt, defendant denied Milner
14 his right to the prompt determination of the status of his FOIA request as mandated by
15 Congress. 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

17 49. By failing to provide Milner with copies of the requested records, defendant
18 denied Milner his right to access this information required by the Freedom of Information
19 Act.

21 50. By failing to make a timely determination of the merits of Milner's FOIA
22 appeal within 20 days of receipt, defendant denied Milner his right of prompt determination
23 of the status of his FOIA request as mandated by Congress. 5 U.S.C. § 552(a)(6)(A)(ii).

25 51. Unless enjoined by this Court, defendant will continue to violate Milner's
26 right to information under the Freedom of Information Act.

1 52. Milner is entitled to the reasonable costs of litigation, including attorneys'
2 fees, pursuant to the Freedom of Information Act. 5 U.S.C. § 552(a)(4)(E).

3
4 VI. RELIEF REQUESTED

5 WHEREFORE, Milner requests that this Court:

6 A. Order defendant to promptly provide Milner with copies of all requested
7 documents which remain at issue in this action.

8 B. Order defendant to waive all fees associated with disclosure of any
9 documents which the Court may order released to Milner in this action.

10 C. Declare defendant's refusal and failure to respond to Milner's FOIA
11 requests and appeals in a timely manner to be unlawful under FOIA.

12 D. Award Milner his costs and reasonable attorneys' fees pursuant to 5 U.S.C.
13 § 552(a)(4)(E).

14 E. Grant such other and further relief as the Court may deem just and proper.

15
16 Dated this 11th day of September, 2006.

17
18 Respectfully submitted,

19 GENDLER & MANN, LLP

20
21 By: David S. Mann
22 David S. Mann
23 WSBA No. 21068
24 Attorneys for Glen Milner